**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.**

**Writ Petition No. 4010(S/S)2001**

WPSS/5639/1991

Smt. Bhawani Devi W/o late Sri Nityanand Bhatt,
Resident of village Ghaneli, P.O. Hawalbagh,
District Almora. ---- Petitioner.

Vs.

1. The Superintendent of Police, Almora,
2. Dy. Inspector General of Police, U.P. Police, Headquarter- Allahabad.
3. Dy. Inspector General, Kumaon Region, Nainital. ----Respondents.

Sri P.C. Bisht, learned counsel for the petitioner,
Sri H.M. Raturi, learned Standing Counsel for the State of Uttarakhand/respondent nos. 1 & 3,
Smt. Beena Pandey, learned Standing Counsel fro State of U.P.

**Hon'ble M.M. Ghildiyal, J.**

Heard Sri P.C. Bisht, learned counsel for the petitioner, Sri H.M. Raturi, learned Standing Counsel for the State of Uttarakhand/respondent nos. 1 & 3 and Smt. Beena Pandey, learned Standing Counsel for State of U.P.

By means of this writ petition, the petitioner has prayed for quashing of the orders dated 08.10.1990 and 19.01.1991. Vide order dated 08.10.1990, the Superintendent of Police, Almora passed order for release of amount of gratuity of the petitioner's husband after deduction a sum of Rs. 13,070.75/- and vide order dated 19th Jan. 1991, the Superintendent of Police, Almora informed the son of late Sri Nityanand Bhatt that the amount, which is being recovered from the deceased's gratuity, has been recovered as per the Rules.

It is contended that husband of the petitioner was posted as Head Constable in Malkhana, at district Headquarter, Almora. He expired in the month of September 1985. After death of petitioner's husband, the petitioner moved application for payment of his gratuity and G.P.F. fund before the respondent no.1 and in turn she was informed by the office of respondent no.1 that after making physical verification of Malkhana it was found that there was deficiency in the items to the tune of Rs. 4,000/- and inquiry is pending for ascertaining the facts. It was advised by respondent no. 1 to the petitioner no move representation for payment of gratuity after deducting the aforesaid amount or Rs. 4,000/-. Consequently, the petitioner moved an application on 24.03.1986 before respondent no.1 But later, the petitioner was informed by respondents that the misplaced amount of Malkhana have now become available, therefore there will not be any deduction from the G.P.G and gratuity of petitioner's husband, however on 08.10.1990 a sum of Rs. 13,070.75/- was ordered to be recovered from the amount of gratuity of petitioner's husband.

Stand of the petitioner is that on the basis of physical verification report of August 1990 some articles were found to be misplaced form the charge of deceased Nityanand Bhatt who expired in September 1985, but for that misplaced items, the deceased cannot be held responsible. After the death of Sri Nityanand Bhatt in the year 1985, his charge was assigned to some other person and at that time the successor employee did not report any deficiency in the items. After about 5 years of the death of petitioner's husband the petitioner's husband cannot be held responsible for the items so misplaced.

No counter affidavit has been fled by the respondents. In absence of rebuttal of the version made in the petition, I find force in the submission of learned counsel for the petitioner. The petitioner's husband expired in the year 1985 and at that time some other person might have been assigned the charge of Malkhana. Thereafter, so many persons have taken over charge of Malkhana. After about 5 years of the death of Sri Nityanana Bhatt, deficiency of articles were found after physical verification, thus the deceased cannot be held responsible for the misplaced items.

In these circumstances, the writ petition is allowed. The respondents are directed to make payment of gratuity and other dues of late Nityanand Bhatt to the petitioner within a period of there months from the date of production of a certified copy of this order.

With these directions, the petition is finally disposed of. No order as to costs.

**(M.M. Ghildiyal, J.)**

May 2, 2007:
NCM: